

ORIGINAL DOCKET FILE COPY ORIGINAL RECEIVED

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D. C. 20554

SEP 12 1994

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
 )  
Equal Access and Interconnection ) CC Docket No. 92-54  
Obligations Pertaining to ) RM-8012  
Commercial Mobile Radio Services )

COMMENTS

Small Market Cellular Operators ("SMC"), by their attorneys, and pursuant to Section 1.415 of the Federal Communications Commission's rules and regulations, 47 C.F.R. § 1.415, submits these comments on the Notice of Proposed Rulemaking and Notice of Inquiry ("Notice") in the above-referenced proceeding. Members of SMC participating in these Comments are identified in Exhibit A attached hereto. In this proceeding the Commission proposes that equal access obligations be imposed on cellular providers. <sup>1/</sup> SMC opposes imposition of equal access requirements on cellular operators as unnecessarily burdensome, and not in the public interest.

I. PRELIMINARY STATEMENT

1. The Commission proposes to impose equal access on certain classes of commercial mobile radio services ("CMRS") providers. The Commission's proposal is based on its belief that doing so will lead to interexchange ("IX") service that is lower in cost and a greater number of choices of IX carrier for cellular customers. It is unlikely that the Commission's laudable objectives can be achieved via the imposition of equal access on cellular providers. This is

<sup>1/</sup> Order extending the comment deadline to September 12, 1994 released August 11, 1994 (DA 94-877)

No. of Copies rec'd  
List A B C D E

01 4

because equal access requirements will actually remove cost savings that cellular operators are currently able to pass on to their customers and because cellular customers already have the ability to select an IX provider. If the Commission weighs the cost of imposing equal access on cellular providers and their customers against the hoped for benefits, it will find that the burdens outweigh the benefits.

**II. APPLYING EQUAL ACCESS TO THE CELLULAR MARKETPLACE WILL RESULT IN HIGHER CHARGES**

2. Cellular operators have, of their own accord, sought ways to reduce customer charges for long-distance calls. Many cellular providers offer their customers larger toll-free calling areas than would be feasible in an equal access environment. Liberty Cellular, for example, offers customers "Local Calling Scopes" ("LCS") that allow customers to initiate a call anywhere within its cellular territory to that Local Calling Scope free of any toll charge. Liberty Cellular offers the first LCS free of charge. Customers may purchase five additional LCSs at a cost of \$1.50 each under certain rate plans. Therefore, as an example, a call originating on a cellular telephone in Pittsburg, Kansas, which is within Liberty Cellular's service area, and terminating via landline telephone several hundred miles away at the opposite end of the state at Garden City, Kansas, which is also within Liberty Cellular's service area, is not treated as a toll call and an interconnection fee is not assessed. Under equal access, the same call costs approximately 28 cents per minute for the interconnection. If equal access is

applied to cellular, Liberty Cellular would be required to apply that interconnection charge. Thus, whereas Liberty Cellular's customers can call across the state at a local calling rate, without having to pay an interconnection charge if the called area was their first LCS (or, if it was their second LCS, for a charge of \$1.50 per month), under equal access, these customers would pay a 28 cent per minute interconnection charge every time they placed that call. It is obvious that the savings under the current regimen has the potential to be considerable. This savings would be lost under equal access. Furthermore, cellular to cellular calls within Liberty Cellular's service area, which are now toll free, would likewise involve an interconnection fee if equal access were instituted for cellular. Thus, the customer would have to give up toll-free calling for equal access.

3. Similarly, Carolina West Cellular offers its customers an extended local calling area and thereby saves its customers charges that would be associated with a toll call. For example, a call between Boone, North Carolina, which is located in NC2 (B) (1) across a LATA boundary to Mount Airy, North Carolina in NC3 (B) (1), both of which are served by Carolina West Cellular, is not treated as a toll call. Whereas, if it were a landline call, it would be a toll call and could cost the customer up to a 24 cents per minute interconnection charge. Cellular carriers are not required to burden the customer with such an interconnection charge and Carolina West finds it economically feasible not to impose such a charge.

4. Enid Cellular Partnership reduces its costs of interLATA

calling by purchasing interexchange service in bulk at a central end office. The company passes those cost savings along to its customers directly or by offering large intraLATA calling areas, referred to as "CGSA Free" or "LATA Free." Customers also have the convenience of a single bill, which they have indicated they prefer over multiple bills. Cellular providers serving small markets look for ways such as these to expand their customers' local calling areas and limit their costs.

5. Based upon these examples, it is clear that if equal access were imposed upon cellular providers, the savings that cellular customers currently enjoy would be lost. Thus, equal access would increase, not decrease, customer charges.

**III. THE ECONOMIC BURDENS OF EQUAL ACCESS OUTWEIGH THE BENEFITS**

6. The burdens of implementing equal access in the cellular environment should not be minimized, particularly with regard to cellular operators serving small markets. Enid Cellular, for example, would need to obtain a direct connection to an access tandem for each IXC participating in an equal access ballot. That would require investment in additional trunks. This investment would necessarily be passed along to consumers. Moreover, it would result in a minimal benefit to the customer, as Enid Cellular customers already have the ability to access the IXC of their choice. Equal access would merely add the convenience of one-plus dialing as opposed to dialing an access code to access an IXC. Based on their experience to date in cellular service, SMC believes that customers would rather have the cost savings of the current

service than the minor dialing convenience that could result from equal access. Such a benefit may not be the benefit cellular customers want if the trade-off is higher calling charges.

7. Equal access was specific to the break-up of AT&T, as the Commission acknowledges in its Notice. Equal access was part of a remedy that was designed to foster a competitive interexchange market in the landline environment and replace the monopoly that existed when AT&T and the Bell Operating Companies ("BOCs") were one. (Notice at para 6) The Commission subsequently imposed equal access on all landline LECs. The current proposal, to apply equal access requirements like those applied to landline LECs, to cellular represents unnecessary regulation where the marketplace is working. The petition of MCI asking the Commission to impose equal access on cellular providers, which stimulated the Commission's proposal, was based on a false premise that competition was lacking.<sup>2/</sup> The cellular marketplace is not closed to IXCs. Cellular customers may access their IXC of choice, as noted herein. Thus, in all significant respects, the cellular industry differs significantly from the pre-divestiture landline telephone environment in which equal access was conceived.

8. Furthermore, the Commission's tentative decision to impose equal access on cellular at this time is not supported by its own criteria for doing so. One of the criteria for determining whether equal access should be imposed on particular segments of the CMRS

---

<sup>2/</sup> (RM-8902, Notice inviting comments released June 10, 1992, DA 92-745).

market, according to the Commission is "a market power analysis." (Notice at para 31) In its Notice, the Commission stated that, "[t]he presence or absence of market power is an important factor in determining whether the imposition of equal access obligations on CMRS providers may be in the public interest." (Notice at para. 32) The Commission apparently decided to disregard its own stated criteria because although it emphasized market power as a key factor in deciding whether to apply equal access to a class of carriers, and although it concluded that "there was insufficient evidence to conclude that the cellular marketplace was fully competitive" (Notice at para. 42), the Commission has tentatively decided to impose equal access on cellular providers nonetheless. Under its own analysis, the FCC should not impose equal access requirements on cellular.

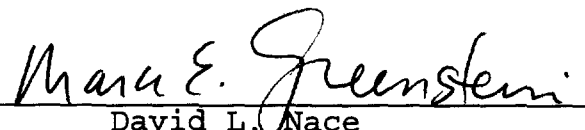
IV. CONCLUSION

9. In the current environment cellular operators have the flexibility to reduce customer charges by such means as expanded calling areas and bulk purchasing of interexchange service. For cellular operators in small markets, investment in facilities is spread among far fewer customers than, for example, their BOC counterparts. Given the benefits that cellular customers reap under a non-equal access marketplace, and in view of the fact that customers may currently access the IXC of their choice, the benefits to cellular customers of equal access do not outweigh its burdens, including the likelihood of higher charges. Therefore, the Commission should not impose equal access obligations on cellular providers.

Respectfully submitted,

SMALL MARKET CELLULAR OPERATORS

By



David L. Nace

Marci E. Greenstein

Its Attorneys

Lukas, McGowan, Nace  
& Gutierrez, Chartered  
1111 19th Street, N. W.  
Twelfth Floor  
Washington, D. C. 20036  
(202) 857-3500

September 12, 1994

Exhibit A

Liberty Cellular, Inc. d/b/a Kansas Cellular  
Kansas RSAs

Cellular Holding, Inc. d/b/a Cellular South  
Mississippi RSAs

North Carolina RSA 3 Cellular Telephone Company d/b/a Carolina West  
Cellular  
North Carolina RSAs

Enid Cellular Partnership  
Oklahoma MSA

BMCT, L.P. d/b/a Blue Mountain Cellular  
Washington and Oregon RSAs



**CERTIFICATE OF SERVICE**

I, Katherine A. Baer, a secretary in the law offices of Lukas, McGowan, Nace & Gutierrez, Chartered, do hereby certify that I have on this 12th day of September, 1994, had copies of the foregoing COMMENTS hand-delivered to the following:

David Nall, Deputy Chief  
Tariff Division  
Common Carrier Bureau  
Federal Communications Commission  
1919 M Street, N. W., Room 518  
Washington, D. C. 20554

Barbara Esbin, Assistant Deputy Chief  
Tariff Division  
Common Carrier Bureau  
Federal Communications Commission  
1919 M Street, N. W., Room 518  
Washington, D. C. 20554

A handwritten signature in black ink, reading "Katherine A. Baer". The signature is written in a cursive style with a horizontal line underneath the name.

Katherine A. Baer